

IN RE: DEVELOPMENT PLAN HEARING AND PETITIONS FOR SPECIAL HEARING AND ZONING VARIANCE - W/S of York Road, 210' N of the c/s of Schwartz Avenue (York Road Plaza) Section District 9 Councilmanic District 4

* BEFORE THE * DEPUTY ZONING COMMISSIONER * OF BALTIMORE COUNTY

Case Nos. IX-597 & 93-198-SPHA (Project No. 92-256-X)

Wyaness Associates Ltd. Part. Owners

HEARING OFFICER'S OPINION AND ORDER

This matter comes before this Hearing Officer/Deputy Zoning Commissioner for consideration of the development plan prepared by Daft-McCune-Walker, Inc. for the proposed development of the subject property by its owners, Wyaness Associates, Limited Partnership. In addition to approval of the development plan submitted, the Petitioners also request a Special Hearing and Variances for the proposed improvements to the subject site. These requests are more particularly described on Developer's Exhibit 1, the site plan and development plan for the subject property.

Appearing at the public hearing required for this project were Michael Trenery with BTR Pealty, Inc., Ed Haile, George Gavrelis and Tom Repsiter, Professional Engineers with Daft-McCune-Walker, Inc. and G. Scott Barhight, Esquire, attorney for the Developer. Also appearing on behalf of the Developer was Glenn Cook, a representative of The Traffic Group, Inc. Numerous representatives of the various agencies of Baltimore County also attended the hearing. Further, several residents of the area appeared as Protestants and interested citizens, including Donald Gerding, H. Holston, Matthew Brown, and Roberta Carter.

Testimony and evidence presented at the hearing was that the subject property is located on York Road near the Baltimore County/Baltimore City line. The property consists of 7.83 acres, more or less, zoned

B.L.-C.C.R. and is the site of an existing shopping center known as the York Road Plaza. The proposed development is primarily for the expansion of an existing Giant Food Store and the relocation of an existing Firestone service garage on the subject site. In addition to the development plan submitted for approval by the Developer, the Developer also requests a special hearing for a determination as to whether York Road Plaza should be treated as a shopping center consisting of 100,000 sq.ft. or more area as to the parking requirements of Section 409.6A.2 of the Baltimore County Zoning Regulations (B.C.Z.R.). The Developer also requests a special hearing for a modification of the site plan previously approved in Case No. 66-105-RXA. Further, the Developer also requests a variance from Sections 232.1 of the B.C.Z.R. to permit a rear yard setback of 0 feet in lieu of the minimum required 20 feet; from Section 409.6A.2 of the B.C.Z.R. to permit 392 off-street parking spaces in lieu of the required 415 spaces for a shopping center of 100,000 sq.ft. or more, or, in the alternative and in the event that a modified parking plan is not approved, a variance from Section 409.6A.2 to permit 392 off-street parking spaces in lieu of the required 490 spaces when individual uses are calculated separately, including a restaurant with a maximum area of 5,000 sq.ft.; and from Section 413.2.E of the B.C.Z.R. to permit an identification sign for a shopping center with a total background area of 256 sq.ft. per face and an actual sign message area of 107 sq.ft. per face, in lieu of the maximum permitted 150 sq.ft. per face, all as more particularly described on Developer's Exhibit 1 and Petitioner's Exhibit 1.

As to the history of this project, the concept plan conference for this development was conducted on November 6, 1992. A community input meeting was held on December 2, 1992. Subsequently, the developer submit-

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ted a development plan and a conference thereon was held on January 20, 1993. Following the submission of that plan, development plan comments were submitted by the appropriate agencies of Baltimore County and a revised development plan incorporating these comments was submitted at the hearing before me on February 10, 1993.

At the onset of the hearing, several issues were identified concerning the proposed development of the subject site. The first issue raised by the Developer and the concerned citizens was what, if any, improvements would be made to Schwartz Avenue, which is a County road immediately adjacent to the proposed site. It was clear that certain improvements would be made to Schwartz Avenue to improve the quality of life of those residents who live along that thoroughfare. The details of these improvements were to be worked out between the citizens and the representatives of the Department of Public Works who control improvements to that street. The Developer has agreed to pay all costs for any and all improvements made to Schwartz Avenue and has agreed to comply with any recommendations made by the community and representatives of the Department of Public Works as to what should be done to improve Schwartz Avenue. Although nothing has been decided at this time concerning improvements to Schwartz Avenue, the Developer shall set aside Fifteen Thousand Dollars (\$15,000) for the anticipated cost of these improvements. The community and the Department of Public Works shall have six (6) years from the date of this Order within which to decide how to utilize this \$15,000. If not used within said 6-year period, the money shall be returned to the Developer.

A second issue concerning Schwartz Avenue was the entranceway to the subject site off of Schwartz Avenue. It was agreed by all parties present that the entranceway into the Giant Food Store parking lot from

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Schwartz Avenue will be an entrance only. Said entrance shall be appropriately posted with signage to notify all members of the public that there shall be no exiting from the subject entranceway.

Another issue was raised by Donald Gerding, a concerned resident of the community. Mr. Gerding raised concern over the anticipated increase in traffic at this location once the proposed improvements are made. He is concerned about access to the subject site by patrons traveling north on York Road who will be turning left at the traffic signal which controls this shopping center. The testimony and evidence presented at the hearing clearly show that improvements need to be made to the left turning lane of northbound York Road at this traffic control device. All parties believe that existing conditions at this site will not be sufficient to handle the additional traffic which will be generated by virtue of the proposed improvements. Also, it was recommended that a left turn arrow be added to the traffic control device to assist patrons making a left turn into this shopping center from northbound York Road.

It is clear that York Road is a state highway and not specifically under the jurisdiction of this Hearing Officer. It was stated by the Developer that the traffic problems associated with this intersection have been brought to the attention of the State Highway Administration (SHA) for their review. While the ultimate resolution of this issue is in the hands of the SHA, this Hearing Officer strongly suggests, based on the testimony and evidence presented at the hearing, that improvements to the left turn lane on York Road be made in order to facilitate the increased activity that will be generated by virtue of the proposed improvements to the subject site. It was also stated at the hearing, and I shall so Order,

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that the Developer pay for any and all improvements to the left turn lane and/or the traffic control device.

At this point, all of the issues raised were resolved and there were no other unresolved issues to be decided. The Developer then proceeded to proffer testimony concerning the special hearing and variances requested. The special hearing requesting a determination that the subject site be treated as a shopping center containing 100,000 sq.ft. shall be denied. The testimony proffered by the Developer revealed that the subject shopping center with the proposed improvements, will operate with approximately 87,300 sq.ft. of space. Therefore, I find the relief requested is not warranted. By virtue of this finding, the Developer is required to provide 490 parking spaces for its customers. The Developer has also requested a special hearing for a modification of the site plan previously approved in Case No. 66-105-RXA. This special hearing request shall be granted consistent with the proposed improvements set forth on Developer's Exhibit 1. The Developer also requested variances to the B.C.Z.R. and proffered testimony to support same.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and

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3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

It is clear from the testimony that if the variance is granted, such use, as proposed, will not be contrary to the spirit of the B.C.Z.R. and will not result in any injury to the public good.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship will result if the variance is not granted. It has been established that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of this variance request and that the requirements from which the Petitioner seeks relief will unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the variance requested will not cause any injury to the public health, safety or general welfare. Further, the granting of the Petitioner's request is in strict harmony with the spirit and intent of the B.C.Z.R.

Based on the proffered testimony presented at the hearing, the Developer's request for a variance from Section 409.6A.2 to permit 392 off-street parking spaces in lieu of the required 490 parking spaces shall be granted. It is not necessary to rule upon the Developer's request for a variance of 392 off-street parking spaces in lieu of the required 415 spaces by virtue of my ruling on the special hearing request that the subject shopping center contains less than 100,000 sq.ft. in area. The Developer's request for an identification sign with a total background area of 256 sq.ft. per face and an actual sign message area of 107 sq.ft.

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per face in lieu of the maximum permitted 150 sq.ft. per face shall also be granted. It is obvious that a new sign is needed at this location and would be in keeping with the proposed improvements to the subject site.

It should be noted that the community representatives present at the hearing were not opposed to the granting of the variances requested or the special hearing to amend the previously approved site plan.

Pursuant to the zoning and development regulations of Baltimore County as contained within the B.C.Z.R. and Subtitle 26 of the Baltimore County Code, the advertisement of the property and public hearing held thereon, I will approve the development plan subject to and consistent with the comments and restrictions contained within this Order and will grant the special hearing to amend the site plan previously approved in Case No. 66-105-RXA and variances requested herein.

THEREFORE, IT IS ORDERED by this Hearing Officer/Deputy Zoning Commissioner for Baltimore County this 24th day of February, 1993 that the development plan for York Road Plaza for the proposed improvements as set forth on Developer's Exhibit 1, be and is hereby APPROVED; and,

IT IS FURTHER ORDERED that the Petition for Special Hearing to approve a modification of the site plan previously approved in Case No. 66-105-RXA, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Zoning Variance requesting relief from Section 232.3.B of the B.C.Z.R. to permit a rear yard setback of 0 feet in lieu of the minimum required 20 feet; from Section 409.6A.2 of the B.C.Z.R. to permit 392 off-street parking spaces in lieu of the required 490 spaces when individual uses are calculated separately, including a restaurant with a maximum area of 5,000 sq.ft.; and

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from Section 413.2.E of the B.C.Z.R. to permit an identification sign for a shopping center with a total background area of 256 sq.ft. per face and an actual sign message area of 107 sq.ft. per face, in lieu of the maximum permitted 150 sq.ft. per face, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Special Hearing to determine that York Road Plaza should be treated as a shopping center consisting of 100,000 sq.ft. or greater as to the parking requirements of Section 409.6A.2 of the B.C.Z.R., be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petition for Zoning Variance requesting relief from Section 409.6A.2 of the B.C.Z.R. to permit 392 off-street parking spaces in lieu of the required 415 spaces for a shopping center of 100,000 sq.ft. or more, be and is hereby DISMISSED AS MOOT.

Any appeal of this decision must be taken in accordance with Section 26-209 of the Baltimore County Code.

TWK:bjs

Timothy M. Kotroco
TIMOTHY M. KOTROCO
Hearing Officer
for Baltimore County

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Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204
February 24, 1993
(410) 887-4386

RE: DEVELOPMENT PLAN HEARING AND
PETITIONS FOR SPECIAL HEARING AND ZONING VARIANCE
W/S York Road, 210' N of the c/l of Schwartz Avenue
(York Road Plaza)
9th Election District - 4th Councilmanic District
Wyness Associates Limited Partnership - Owners/Developers
Case No. IX-597 and 93-198-SPHA (Project No. 92-256-2)

Dear Mr. Barhight:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Development Plan, Petition for Special Hearing, as modified herein, and Petition for Zoning Variance have been approved, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,
Timothy M. Kotroco
TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:hjs

cc: Messrs. Ed Haile, George E. Gavrelis and Tom Repelster
Daft-McCune-Walker, Inc., 200 E. Pennsylvania Ave., Towson, Md. 21204

Mr. Glenn Cook, The Traffic Group
40 W. Chesapeake Avenue, Suite 600, Towson, Md. 21204

Mr. Donald Gerding, 335 Old Trail, Baltimore, Md. 21212

Mr. H. Holston, 94 Dunkirk Road, Baltimore, Md. 21212

Mr. Matthew Brown, 15 E. Montgomery Street, Baltimore, Md. 21230

Ms. Roberta Carter, 407 Schwartz Avenue, Baltimore, Md. 21212-2225

People's Counsel; File



Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 6300 York Road

which is presently zoned RL-OC

This Petition shall be filed with the Office of Zoning Administration & Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s)

(See attached sheet)

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty)
Unique characteristics and circumstances regarding the re-development of York Road Plaza to be presented in detail at the hearing.

Property is to be posted and advertised as prescribed by Zoning Regulations.

Let me, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contact Purchaser/Lessor

N/A

(Type or Print Name)

Signature

Address

City

State

Zipcode

Attorney for Petitioner

Go. Scott Barhight

(Type or Print Name)

Signature

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Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

January 27, 1993 (410) 887-3353

G. Scott Barhight, Esquire
500 Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204

RE: Case No. 93-198-SPHA, Item No. 208
Petitioner: Wyness Associates Limited Partnership
Petition for Special Hearing and Variance

Dear Mr. Barhight:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by Zoning personnel.

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

Your petition has been received and accepted for filing this 16th day of December 1992.

Arnold Jablon
ARNOLD JABLON
DIRECTOR

Received By:
W. Carl Richard Jr.
Chairman,
Zoning Plans Advisory Committee

Petitioner: Wyness Associates Limited Partnership
Petitioner's Attorney: G. Scott Barhight

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: January 5, 1993
Zoning Administration and Development Management

FROM: Robert W. Bowling, P.E.

RE: Zoning Advisory Committee Meeting
for January 4, 1993
Item No. 208

The Developers Engineering Division has reviewed the subject zoning item.

The required right-of-way widening and grading of Schwartz Avenue are not shown. These improvements will interfere with the parking along the south side of the site, reducing the total number of parking spaces.

Site specific landscape comments will be included in the development plan comments for the January 20, 1993 development plan meeting.

Robert W. Bowling
ROBERT W. BOWLING, P.E., Chief
Developers Engineering Division

RWB:s

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration &
Development Management

DATE: January 19, 1993

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: York Road Plaza

INFORMATION:
Item Number: 208
Petitioner: Wyness Associates Limited Partnership
Property Size: 7.83 acres
Zoning: BL-COC
Requested Action: Special Hearing, Variance
Hearing Date: / /

SUMMARY OF RECOMMENDATIONS:
York Road Plaza will come before the Hearing Officer on February 10, 1993 for approval of the Development Plan. At that particular time, the Hearing Officer will rule on any variances, special exceptions or special hearings applicable to this site, in addition to taking final action on this Development Plan.

The Office of Planning and Zoning's comments on the variance and special hearing are included as part of the Development Plan file.

Prepared by: *Franklin Ramsey*

Division Chief: *Carol Kerner*

PK/FH:rdn

See'd

Baltimore County Government
Fire Department

700 East Joppa Road, Suite 901
Towson, MD 21286-5500

DECEMBER 28, 1992 (410) 887-4500

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204

RE: Property Owner: WYNESS ASSOCIATES LIMITED PARTN
Location: #6300 YORK ROAD - YORK ROAD PLAZA
Item No.: + 208 (JCM) Zoning Agenda: DECEMBER 28, 1992

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1988 edition prior to occupancy.

REVIEWER: *Carl Anderson*
Planning Group
Special Inspection Division

JP/KEK

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

JAN. 11 1993 (410) 887-3353

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 93-198-SPHA (Item 208)
W/S York Road, 210' W of c/l Schwartz Avenue
6300 York Road - York Road Plaza
9th Election District - 4th Councilmanic
Petitioner(s): Wyness Associates Limited Partnership
HEARING: WEDNESDAY, FEBRUARY 10, 1993 at 10:30 a.m. in Rm. 106, Office Building.

Special Hearing to approve a modified parking plan which treats York Road Plaza as a shopping center with 100,000 square feet or more with respect to the parking requirements; and to approve the modifications of the petition and plan approved in Case #63-105-022 by amending the approved site plan to authorize a new plan for the Center which includes a revised location of a new special exemption for the existing service garage.

Enclosed to permit a rear yard of zero feet in lieu of the required 20 feet; to permit 392 off-street parking spaces in lieu of the required 415 spaces for a shopping center of 100,000 square feet or more; in the alternative and in the event that a modified parking plan is not approved, to permit 392 off-street parking spaces in lieu of the required 400 spaces when individual uses are calculated separately including a restaurant with a maximum area of 5,000 square feet; and to permit an identification sign for a shopping center with a total background area of 256 square feet per face in lieu of the permitted maximum area of 150 square feet per face.

Arnold Jablon
Arnold Jablon
Director

cc: Wyness (c/o BTE Realty)
G. Scott Barhight, Esq.

NOTE: HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.

